Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Petitioner,	
and	PERB Case No. 04-A-03
	Opinion No. 860
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The Fraternal Order of Police/ Metropolitan Police Department Labor Committee ("Union") filed an Arbitration Review Request ("Request"). The Union seeks review of an Arbitration Award ("Award") that denied the grievance filed by the Union. The District of Columbia Metropolitan Police Department ("MPD") opposes the Request.

The issue before the Board is whether "the arbitrator was without authority or exceeded his or her jurisdiction." D.C. Code § 1 - 605.02(6) (2001 ed.).

II. Discussion

In 2002 and 2003, Chief of Police Ramsey ("Chief") declared three emergencies existed within the District of Columbia. (See Award at p. 2). Due to these declared emergencies, the Chief made changes to the work schedule of bargaining. Group and class grievances were filed by the union members affected by the work schedule changes alleging violations of the Collective Bargaining Agreement ("CBA"), Articles 4, Management Rights, and 24, Scheduling, and D.C. Code §§ 1-

612.01, Hours of Work, and 1-617.08, Management rights. (See Award at p. 3). Specifically, these group grievances alleged that MPD's exercise of its management rights can only occur "in accordance with applicable laws, rules and regulations"[1] and that the D.C. Code requires that "[t]he working hours in each day in the basic work week are the same" and that days off be consecutive.[2] Consequently, the Union argued that when MPD assigned the grievants to tours of duty which varied from their regularly assigned schedules, MPD violated the CBA by violating the D.C. Code.

The parties were unable to resolve the grievances. Therefore the Union invoked arbitration. (See Award at p. 3).

At arbitration, the Union argued that only the Mayor may suspend the requirements of § 1-612.01(b). *The Union claims that pursuant to* D.C. Code § 1-612.01(b), absent a declaration by the Mayor, the Chief is prohibited from assigning members to varying tours of duty or non-consecutive days off without giving one week's advance notice. It was undisputed that no declaration of an emergency was made by the Mayor. The Union acknowledges that the Chief may declare an emergency situation and suspend the provisions of the CBA which require 14 days advance notice prior to making changes in an employee's tour of duty.[3] (See Award at p. 14). However, pursuant to D.C. Code § 1-612.01(b)(1), MPD must still provide one week's notice. Under the circumstances, the Union argued that MPD violated the CBA and the D.C. Code when it assigned the grievants to varying tours of duty within the same work week and to non-consecutive days off, and by not providing the statutorily required one week notice prior to the changes in their work schedules. In view of the above, FOP argued that MPD failed to exercise its management rights in accordance with applicable law, violating the CBA.

The Union requested as a remedy for violation of the CBA, compensation of time and one-half pay as a penalty. In support of this request, the Union cited *Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Dolan, et al.) and Metropolitan Police Department*, AAA Case No. 16 39 00248 93 (Jules O. Pagano, April 5, 1994). In that case, the Arbitrator awarded time and one-half pay because he found that MPD had violated CBA Articles 4 and 24, when the Chief, absent a declaration of emergency by the Mayor, assigned Training Division officers to two different tours of duty within one work week.

MPD countered that the management rights provisions of D.C. Code § 1-617.08 "trump[s] the everday rules and expectations contained in D.C. Code § 1-612.01." (Award at p. 15). In addition, MPD claimed that under the emergency circumstances which are the subject of these

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[1] CBA Article 4.

[2] D.C. Code § 1-612.01 (3).

[3] CBA Article 24, Section 1.

grievances, neither the law nor the CBA provide for the Union's requested remedy. MPD also contended that the "cannons of statutory construction and contract interpretation establish that the specific language, concerning the Chief's right to take whatever action is necessary in an emergency, renders conflicting language inoperative." (Award at p. 16). Moreover, MPD asserted that because these grievances involve a clear management right, that the grievances are not arbitrable. Lastly, MPD maintained that the *Dolan* case is not applicable, because no declaration of an emergency was made.

The Arbitrator accepted into evidence a document, Mayor's Order 2000-83, first submitted to him in a reply brief from MPD. He then relied on that document to rule against the Union in an Award issued on November 5, 2003. The Union chose not to raise any issue to the Arbitrator concerning his admission into evidence of the Mayor's Order.

In his Award, Arbitrator Sean J. Rogers found that the grievances were arbitrable, because the management rights provisions of the CBA, "are not unbridled", and must be exercised in accordance with applicable laws, rules and regulations. (See Award at p. 16). The Arbitrator determined that the Mayor's emergency declaration powers did not reside solely with the Mayor because of his issuance of Mayor's Order 2000-83.

In their Request, the Union argues that the introduction of the Mayor's Order in the Reply Brief presented by MPD resulted in the Arbitrator exceeding his jurisdiction and being without authority to render his Award. MPD filed an Opposition to the Request, asserting that the Arbitrator was within his authority to request and rely on the Mayor's Order.

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. If "the arbitrator was *without authority*, or exceeded, his or her jurisdiction";
2. If "the award on its face is contrary to law and public policy"; or
3. If the award "was procured by fraud, collusion or other similar and unlawful means."

In the present case, the Union asserts that the Arbitrator was without authority or exceeded his jurisdiction by relying on the Mayor's Order 2000-83, for the proposition that the Mayor had delegated authority to the Chief of Police regarding the suspension of the notice requirements. In support of this argument, the Union contends that under Article 19, Section 5 of the CBA, that "the parties to the grievance or appeal shall not be permitted to assert in such arbitration proceedings any ground or to rely on any evidence not previously disclosed to the other party." (See Request at p. 4). The Union argues that because the Arbitrator did not enforce this contract provision precluding MPD from presenting the Mayor's Order, he has exceeded his jurisdiction and was without authority

to render his Award dismissing the grievances.

We have held that "[i]ssues not presented to the arbitrator cannot subsequently be raised before the Board as a basis for vacating an award." *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/ Metropolitan Police Department Labor Committee*, 39 DCR 6232, Slip Op. No. 282 at p. 4, n. 5, PERB Case No. 87-A-04 (1991). Here, the Union made no objection to the admission of the Mayor's Order before the Arbitrator, but now raises that objection before the Board. Had the Union not had the opportunity to object to admission of that document prior to the Arbitrator's ruling, we might reach a different result. However, in asking for reply briefs to "aid me in my adjudication of the grievance", the Arbitrator expressly stated: "I invite the parties to reply on any issues raised in the others' submissions.) (Respondent's Opposition, Attachment 1). Consequently, the Board finds that this argument does not present a statutory basis for review. As a result, the Board cannot reverse the Award on this ground

In addition, the Union asserts that the Arbitrator's interpretation and application of Article 19 of the CBA failed to disallow the submission of the Mayor's Order in a reply brief. We have held and the District of Columbia Superior Court has affirmed that, "[i]t is not for [this Board] or a reviewing court...to substitute their view for the proper interpretation of the terms used in the [CBA]." *District of Columbia General Hospital v. Public Employee Relations Board*, No. 9-92 (D.C. Super Ct. May 24, 1993). See also, *United Paperworkers Int'l Union AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, an arbitrator's decision must be affirmed by a reviewing body "as long as the arbitrator is even arguably construing or applying the contract. *Misco, Inc.*, 484 U.S. at 38. Also, we have explained that:

> [by] submitting a matter to arbitration the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.

District of Columbia Metropolitan Police Department v. Fraternal Order of Police/ Metropolitan Police Department Labor Committee, 47 DCR 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *D. C. Metropolitan Police Department and Fraternal of Police, Metropolitan Police Department Labor Committee (Grievance of Angela Fisher)*, 51 DCR 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

Here, the Board finds that the Union is merely disagreeing with the Arbitrator's interpretation and application of the provisions of the CBA. As stated above, disagreement with the Arbitrator's interpretation of the parties' CBA is not grounds for reversing the Arbitrator's Award. See, *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. No. 04 MPA 0008 (May 13, 2005) and *Metropolitan Police Department v. Public Employee Relations Board*, D.C. Sup. Ct. 01 MPA 18 (September 17, 2002). Thus, the Board finds that the Union's claim does

not present a statutory basis for review. As a result, we cannot reverse the Award on this ground.

In view of the above, we find that FOP has not met the requirements for reversing Arbitrator Rogers' Award. In addition, we find that the Arbitrator's conclusions are supported by the record. Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Review Request is denied.

(2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 4, 2007.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.04-A-03 was transmitted via Fax and U.S. Mail to the following parties on this the 4th day of January 2007.

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